

Remarks

The Office Action dated November 8, 2004 has been carefully reviewed and the foregoing amendment has been made in consequence thereof.

Claims 1-48 are pending in this application. Claims 1-48 stand rejected.

Applicant notes the objection to Claim 18. Applicant has amended Claim 18 to recite "result in a workload value" as suggested in the Office Action. Additionally, Claim 34 has been amended to include a similar recitation.

Claims 1, 17 and 33 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has amended Claims 1, 17 and 33 to overcome the rejection. Specifically, each of the Claims have been amended to recite "at least one delivery vehicle slot" and "a plurality of delivery slots." Therefore, each of the Claims no longer recite two types of delivery slots as asserted in the Office Action at page 3.

Accordingly, Applicant respectfully requests that the 35 U.S.C. §112, second paragraph, rejection of Claims 1, 17, and 33 be withdrawn.

Claims 1-2, 9-11, 17-18, 25-27, 33-34, and 41-43 are rejected under 35 U.S.C. §102 (e) as being anticipated by Mowery et al. (US Pat. No. 5,983,198) is respectfully traversed.

Mowery et al. describe an inventory control method that monitors product level in customer storage tanks (104) and a delivery scheduling method that utilizes the monitored tank level data. The timing of the delivery is determined by the forecasted usage of material in the tank; the available capacities of neighboring tanks; that a delivery can be made whenever the tank level is in the "delivery zone" (i.e., the amount of material is between the minimum inventory level and the maximum order level, see Figure 4); and that a delivery will be made before the tank level reaches the minimum inventory level. Also, the amount of delivery is determined by the available tank capacity; minimum delivery amount for the tank; the maximum delivery amount for the tank; and the available capacities of neighboring tanks (see Col. 9, lines 14-24). In addition, Mowery describes historical/forecasting software that compares the historical usage with previous patterns, and automatically notifies customers these variations (see Col. 8, lines 35-40).

Claim 1 recites a method of tracking and predicting the capacity utilization of a goods delivery system, the system having at least one delivery agent and at least one delivery zone comprising a geographic area comprising a zip group having at least one zip code, each delivery agent having at least one delivery vehicle comprising at least one delivery vehicle slot, each delivery vehicle slot defined as a portion of the at least one delivery vehicle used to deliver a good, the goods delivery system providing a respective first potential delivery date, a respective order, and the number of delivery vehicle slots the respective order will fill, wherein the method of tracking capacity utilization includes “defining a delivery agent capacity utilization matrix comprising a plurality of delivery slots for each zone, the plurality of delivery slots relating to the total number of delivery vehicle slots for the delivery agent and defining a delivery capacity of the delivery agent...determining a respective zone maximum number of delivery slots and a respective number of used delivery slots for a specified period of time within the respective delivery zone...determining whether the respective order can be shipped on the first potential ship date based on the number of available delivery slots, wherein said respective number of available delivery slots is equal to said respective zone maximum number of delivery slots minus said respective number of used delivery slots...returning a respective date that the respective order can be delivered...updating the respective delivery agent capacity utilization matrix for the specified period after the respective order has been included within said respective number of used delivery slots.

Applicant respectfully submits that the Section 102 rejection of the presently pending claims is not a proper rejection. The Federal Circuit has opined that to anticipate a claim, a single source must contain all of the elements of the claim. See *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 137, 1379, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986). Also, missing elements may not be supplied by the knowledge of one skilled in the art or the disclosure of another reference. See *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984).

Mowery et al. do not describe nor suggest a method as recited in Claim 1. More specifically, Mowery et al. do not describe nor suggest a method that includes the step of defining a delivery agent capacity utilization matrix having a plurality of delivery slots for

each zone, wherein the plurality of delivery slots relate to the total number of delivery vehicle slots for the delivery agent and define a delivery capacity of the delivery agent. Rather, in contrast to the present invention, Mowery et al. describe an inventory control method that monitors product level in customer storage tanks and a delivery scheduling method that utilizes the monitored tank level data. Moreover, Mowery et al. do not describe nor suggest a delivery capacity of the delivery agent, but rather, the delivery schedule of Mowery et al. is based on the capacity of the tanks to receive product, not on the capacity of the delivery agent to deliver product. Specifically, Mowery et al. do not describe nor suggest a delivery agent capacity utilization matrix that includes a plurality of delivery slots relating to the total number of delivery vehicle slots for the delivery agent to define a delivery capacity of the delivery agent. Additionally, Mowery et al. do not describe nor suggest delivery vehicle slots that are defined as a portion of a delivery vehicle used to deliver a good.

Moreover, Mowery et al. do not describe nor suggest the steps of determining a respective zone maximum number of delivery slots and a respective number of used delivery slots for a specified period of time within the respective delivery zone and updating the respective delivery agent capacity utilization matrix for the specified period after the respective order has been included within said respective number of used delivery slots. Rather, Mowery et al. describe an algorithm that calculates the tank material usage and an associated amount needed to keep the amount of material in the tank above a minimum inventory level L1.

The Office Action at page 5, suggests that Mowery et al. teach a delivery zone that includes customers with storage tanks with each tank having a maximum so that the zone has a total maximum for delivery and that the “availability of each customer's tank is measured by delivery slots”. Applicant respectfully submits that the term “delivery slot” is not used by Mowery et al. anywhere in U.S. Patent No. 5,983,198. And further, if, *arguendo*, Mowery et al. did intend to use the term “delivery slot” to mean the “availability of each customer's tank is measured by delivery slots”, Mowery et al. do not describe nor suggest a delivery slot relating to the total number of delivery vehicle slots that are defined as a portion of the delivery vehicles used to deliver goods. Also, at page 7 of the present application, Applicant describes that delivery slots represent the delivery agent's delivery capacity and

that the maximum number of delivery slots for each delivery day is defined as the total number of slots the delivery agent's vehicles can deliver in the zone and is called the zone maximum. Mowery et al. is silent as to the number of delivery vehicle slots present in a delivery agent's trucks. The system of Mowery et al. is only based on the capacity of the tanks where the product is to be delivered, the historical usage of each tank, and the minimum level allowable in each tank to sustain production at the plant.

Also, the Office Action, at page 5, suggests that "each customer's delivery availability is determined by the tank maximum (L3) minus the number of used slots (L2)." Applicant respectfully submits this suggestion is incorrect. Mowery et al. describe at Col. 9, lines 20-25 that the amount of the delivery is determined by the available capacity of the tank (capacity L3 minus ending inventory L2). Applicant submits that the tank ending inventory (L2) is not the same as the number of used slots in the delivery agent's vehicles. In the present application and as explained above, the maximum number of delivery slots for each delivery day is defined as the total number of slots that the delivery agent's vehicles can deliver in the zone and is called the zone maximum. Mowery et al. do not describe nor suggest such a feature.

Further, the Office Action suggests that Mowery et al. teaches "updating the respective capacity utilization matrix for the above specified period after the respective order has been included within said respective number of used slots (See figure 5, column 4, lines 12-45 and 56-61, column 5, lines 30-40, column 7, lines 15-33, and column 9, lines 1-13, wherein the central system is updated to reflect the delivery of the goods and the respective number of slots (levels) of capacity delivered and utilized in a period)". Applicant respectfully disagrees with this suggestion because Mowery et al. do not describe nor suggest a delivery agent capacity utilization matrix that includes a plurality of delivery slots for each zone, the plurality of delivery slots relating to the total number of delivery vehicle slots for the delivery agent and defining a delivery capacity of the delivery agent, wherein each delivery vehicle slot is defined as a portion of a delivery vehicle used to deliver a good. Mowery et al. only teach the maximum capacity of the tanks to receive delivery.

Moreover, Mowery et al. do not describe nor suggest a delivery capacity of the delivery agent. For example, Mowery et al. do not take into account in their system the

situation of when the delivery agent has the capacity to deliver two times the amount that the plurality of tanks in the delivery agent's delivery zone can receive. The delivery schedule of Mowery et al. is based on the capacity of the tanks to receive product, not on the capacity of the delivery agent to deliver product.

Accordingly, for at least the reasons set forth above, Claim 1 is submitted to be patentable over Mowery et al.

Claims 2 and 9-11 depend from independent Claim 1. When the recitations of Claims 2 and 9-11 are considered in combination with the recitations of Claim 1, Applicant submits that dependent Claims 2 and 9-11 likewise are patentable over Mowery et al.

Mowery et al. do not describe nor suggest a computer process as recited in Claim 17 of the present application. Particularly, and at least for the reasons explained above, Mowery et al. do not describe nor suggest a method that includes the steps of defining a delivery agent capacity utilization matrix comprising a plurality of delivery slots for each zone, the plurality of delivery slots relating to the total number of delivery vehicle slots for the delivery agent and defining a delivery capacity of the delivery agent, determining a respective zone maximum number of delivery slots and a respective number of used delivery slots for a specified period of time within the respective delivery zone, and updating the respective delivery agent capacity utilization matrix for the specified period after the respective order has been included within said respective number of used delivery slots. Accordingly, Applicant submits that Claim 17 is patentable over Mowery et al.

Claims 18, and 25-27 depend from independent Claim 17. When the recitations of dependent Claims 18, and 25-27 are considered in combination with the recitations of Claim 17, Applicant respectfully submits that Claims 18, and 25-27 likewise are patentable over Mowery et al.

Mowery et al. do not describe nor suggest a method as recited in Claim 33. Particularly, and for the reasons explained above, Mowery et al. do not describe nor suggest a method that includes the steps of defining a delivery agent capacity utilization matrix comprising a plurality of delivery slots for each zone, the plurality of delivery slots relating to the total number of delivery vehicle slots for the delivery agent and defining a delivery capacity of the delivery agent, determining a respective zone maximum number of delivery

slots and a respective number of used delivery slots for a specified period of time within the respective delivery zone, and updating the respective delivery agent capacity utilization matrix for the specified period after the respective order has been included within said respective number of used delivery slots. Accordingly, Applicant submits that Claim 33 is patentable over Mowery et al.

Claims 34 depends from independent Claim 33. When the recitations of dependent Claim 34 are considered in combination with the recitations of Claim 33, Applicant respectfully submits that Claim 34 likewise is patentable over Mowery et al.

Claim 41 recites a method of predicting the capacity utilization of a goods delivery system, “the system having at least one delivery zone, each delivery zone having a capacity utilization matrix comprising a plurality of slots each slot having an associated workload value, said method of predicting the capacity utilization comprising the steps of: predicting the probability of a future respective used slot being full based on historical over capacity conditions...predicting whether the trend line of the capacity utilization is changing”.

Mowery et al. do not describe nor suggest a method as recited in Claim 41. More specifically, Mowery et al. do not describe nor suggest a method that includes the steps of predicting the probability of a future respective used slot being full based on historical over capacity conditions, and predicting whether the trend line of the capacity utilization is changing. Rather, in contrast to the present invention, Mowery et al. describe software that predicts future material usage in customer storage tanks, i.e., the available capacity of the tank, based on the historical tank material usage. Notably, Mowery et al. do not describe nor suggest predicting whether the trend line of the capacity utilization is changing. Rather, the historical/forecasting software merely compares the historical usage with previous patterns. Notably, if the historical/forecasting software detects the difference, the software only notifies the customers instead of predicting the trend line. Accordingly, for at least the reasons set forth above, Claim 41 is submitted to be patentable over Mowery et al.

Claims 42 and 43 depend from independent Claim 41. When the recitations of Claims 42 and 43 are considered in combination with the recitations of Claim 41, Applicant submits that dependent Claims 42 and 43 likewise are patentable over Mowery et al.

For the reasons set forth above, Applicant respectfully requests that the Section 102(e) rejection of Claims 1, 2, 9-11, 17-18, 25-27, 33-34, and 41-43 be withdrawn.

The rejection of Claim 3-8, 12-16, 19-24, 28-32, 35-40, and 44-48 under 35 U.S.C. § 103(a) as being unpatentable over Mowery is respectfully traversed.

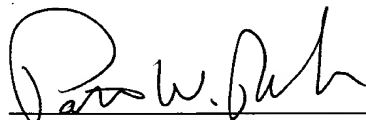
As explained above, independent Claims 1, 17, 33, and 41 are patentable over Mowery et al.

Claims 3-8 and 12-16 depend from independent Claim 1, Claims 19-24 and 28-32 depend from independent Claim 17, Claims 35-40 depend from independent Claim 33, and Claims 44-48 depend from independent Claim 41. When the recitations of dependent Claims 3-8 and 12-16, dependent Claims 19-24 and 28-32, dependent Claims 35-40, and dependent Claims 44-48 are considered in combination with the recitations of Claims 1, 17, 33, and 41 respectively, Applicant respectfully submits that Claims 3-8, 12-16, 19-24, 35-40, and 44-48 likewise are patentable over Mowery et al.

For the reasons set forth above, Applicant respectfully requests that the Section 103(a) rejection of Claims 3-8, 12-16, 19-24, 28-32, 35-40, and 44-48 be withdrawn.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Favorable action is respectfully solicited.

Respectfully Submitted,



Patrick W. Rasche
Registration No. 37,916
ARMSTRONG TEASDALE LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
(314) 621-5070